

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

SEP 29 1997

In the Matter of)
)
Implementation of the Subscriber Carrier)
Selection Changes Provisions of the)
Telecommunications Act of 1996) CC Docket No. 94-129
)
Policies and Rules Concerning)
Unauthorized Changes of Consumers')
Long Distance Carriers)

REPLY COMMENTS OF GTE

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REPLY COMMENTS OF GTE

GTE Service Corporation and its affiliated telecommunications companies (collectively "GTE")¹ respectfully submit their Reply Comments on the Further Notice of Proposed Rule Making in the above-captioned proceeding.²

Commenters confirm that "slamming," the unauthorized changing of a customer's telecommunications carrier, is a significant problem for both consumers and carriers. As discussed below, the record supports prompt Commission action to address this problem by eliminating the incentives for slamming through

¹ GTE Alaska Incorporated, GTE Arkansas Incorporated, GTE California Incorporated, GTE Florida Incorporated, GTE Hawaiian Telephone Company Incorporated, The Micronesian Telecommunications Corporation, GTE Midwest Incorporated, GTE North Incorporated, GTE Northwest Incorporated, GTE South Incorporated, GTE Southwest Incorporated, Contel of Minnesota, Inc., Contel of the South, Inc., GTE Communications Corporation, GTE Hawaiian Tel International Incorporated, and GTE Wireless Products and Services.

² Further Notice of Proposed Rule Making and Memorandum Opinion and Order on Reconsideration, CC Docket No. 94-129 (rel. July 15, 1997) ("FNPRM").

competitively-neutral slamming rules that protect consumers without unnecessarily limiting competition and by an effective enforcement program directed against "bad actors."

I. INTRODUCTION AND SUMMARY

The comments filed in response to the Commission's FNPRM demonstrate the overwhelming consensus that slamming is a problem that harms consumers and impedes legitimate competition among carriers. Consumer groups, local and interexchange carriers, and state regulatory agencies alike largely support the Commission's efforts to implement Congress' clear mandate to protect consumers by eliminating incentives to engage in slamming. Accordingly, GTE urges the Commission to take prompt action to enforce existing slamming rules, impose substantial penalties on "bad actors," encourage development of new measures that empower consumers to protect themselves from slamming, and ensure that slammed subscribers are made whole. Creating additional regulations to control bad actors who are ignoring existing rules would likely have no beneficial effect and needlessly burden compliant parties.

The record supports adoption of a number of GTE's suggestions concerning the Commission's proposed slamming rules:

- Verification rules should be applied to telephone exchange and toll services;
- Slammed customers should only be liable for those charges that they would have incurred through their authorized carrier;
- In-bound customer calls are less likely to result in slamming than carrier-initiated calls and should not be subject to the same verification rules;

- A "bright line" test should be used for determining whether a reseller must identify a change in its underlying carrier; and
- Imposing liability on ILECs for inadvertent mistakes or simple processing errors would be fraught with problems and is inconsistent with the spirit and intent of Section 258 of the Communications Act.

Accordingly, GTE urges adoption of these recommendations, which will ensure that the Commission's slamming rules achieve the goal of protecting consumers.

At the same time, the Commission must not restrict competition by imposing discriminatory regulations on incumbent LECs ("ILECS") or mandating unnecessary third party verification requirements. GTE urges the Commission to reject proposals that seek to impose discriminatory burdens such as third party verification of preferred carrier ("PC") change requests in lieu of other verification options, limits on promotional and marketing efforts, and new PC-change processing reporting requirements solely on ILECs. As the record indicates, there is no basis for treating ILECs different from other carriers because there is no reason to believe they have either a unique ability or a greater incentive to discriminate between carriers or to slam local customers. Among other reasons, ILECs lack the incentive to engage in slamming because such activities are inconsistent with ILECs' historical relationship with their customers. Further, imposing unique restrictions on ILECs is patently discriminatory and inconsistent with the interests of consumers and competition -- particularly in view of the fact that ILECs have not been the cause of the serious slamming problem that currently exists. Accordingly, any request verification procedures the Commission prescribes must apply equally to all carriers.

Similarly, the Commission should decline to adopt the proposals advanced by several parties that all PC changes be administered through a third party and that PC-change freeze procedures be modified. Contrary to the assertions of the America's Carrier Telecommunication Association ("ACTA") and MCI, third party implementation of PC changes would fail to reduce the opportunity for slamming because such a proposal does nothing to limit carriers' ability to submit unauthorized PC-change requests. In addition, because a PC-change freeze is the only method customers have to protect themselves against slamming, the effectiveness of this mechanism should not be undermined by adoption of MCI's suggested changes.

II. THE RECORD SUPPORTS ADOPTION OF A NUMBER OF GTE'S SUGGESTIONS REGARDING THE COMMISSION'S PROPOSED SLAMMING RULES

A. Verification Rules Should Be Applied to Telephone Exchange and Toll Services

There is general agreement among commenters that verification rules should be applied to telephone exchange and toll services.³ Those parties who support such a rule concur that the opportunity for slamming will increase as

³ See, e.g., Comments of AT&T Corporation, CC Docket No. 94-129 at 2 (filed Sept. 15, 1997) ("AT&T Comments"); Comments of Ameritech, CC Docket No. 94-129 at 5-7 (filed Sept. 15, 1997) ("Ameritech Comments"); Comments of the State of California Public Utilities Comm'n, CC Docket No. 94-129 at 6-7 (filed Sept. 12, 1997) ("California PUC Comments"); Comments of the State of Florida Public Service Comm'n, CC Docket No. 94-129 at 2 (filed Sept. 15, 1997) ("Florida PSC Comments"); Comments of MCI Telecommunications Corporation, CC Docket No. 94-129 at 3 (filed Sept. 15, 1997) ("MCI Comments"); Comments of Southwestern Bell Telephone Co., CC Docket No. 94-129 at 5-6 (filed Sept. 15, 1997) ("SBC Comments").

consumers are able to choose among a variety of providers for local and other telecommunications services. GTE submits that Section 258 of the Communications Act expressly authorizes application of verification rules to local exchange and toll services, and verification of customer selections in these markets is critical to reducing the opportunity for slamming.⁴

B. Slammed Customers Must Be Made Whole

A number of commenters also agree that slammed customers must be made whole and should be required to pay only what they would have owed their authorized carrier for the services received.⁵ Bell Atlantic correctly notes that requiring slammed customers to pay for the charges that they would have incurred for the services received will encourage prompt reporting of slamming incidents and reduce the potential for fraudulent claims.⁶ As U S West explains, such an approach also ensures that authorized carriers are not deprived of revenues they would and should have collected -- but for the unauthorized switch of their customers to another network.⁷ Once the authorized carrier has

⁴ GTE emphasizes that the Commission and the states should cooperate to implement procedures that apply to local services. To this end, the Commission can provide guidance to the states to conform applicable requirements, thereby providing clear direction to consumers and carriers.

⁵ See, e.g., Comments of BellSouth Corporation, CC Docket No. 94-129 at 13 (filed Sept. 15, 1997) ("BellSouth Comments"); Comments of Cable & Wireless, Inc., CC Docket No. 94-129 at 11-12 (filed Sept. 15, 1997) ("Cable & Wireless Comments").

⁶ Comments of Bell Atlantic Corporation, CC Docket No. 94-129 at 3-4 (filed Sept. 15, 1997) ("Bell Atlantic Comments").

been reimbursed, that carrier should award its returned customer the premiums that would have been earned absent the slamming.⁸

In contrast, those parties who assert that customers should not be liable for slammed charges fail to address adequately the problems with this approach.⁹ As noted above, absolving customers of liability would increase the opportunity for abuse since there would be little incentive to report promptly an unauthorized change in service. In addition, such an approach would inappropriately limit an authorized carrier's ability to collect revenues in accordance with Section 258. Instead, the majority approach of ensuring that customers only pay what they would have paid to their authorized carrier ensures that both customers *and* authorized carriers are compensated for their losses.

⁷ Comments of U S West , CC Docket No. 94-129 at 44-45 (filed Sept. 15, 1997) ("U S West Comments").

⁸ Accord AT&T Comments at 17; Cable & Wireless Comments 7-8; Comments of the Competitive Telecommunications Association, CC Docket No. 94-129 at 12-13 (filed Sept. 15, 1997) ("Comptel Comments"); Comments of The Public Utility Comm'n of Texas, CC Docket No. 94-129 at 6-7 (filed Sept. 15, 1997) ("Texas PUC Comments").

⁹ See, e.g., Comments of The National Consumers League, CC Docket No. 94-129 at 6-7 (filed Sept. 15, 1997) ("National Consumers League Comments"); Comments of The New York Department of Public Service, CC Docket No. 94-129 at 11 (filed Sept. 15, 1997) ("New York Department of Public Service Comments"); Comments of the Tennessee Regulatory Authority, CC Docket No. 94-129 at 3 (filed Sept. 15, 1997) ("Tennessee Regulatory Authority Comments").

C. In-Bound Customer Calls Are Less Likely to Result in Slamming

A number of parties agree with GTE that customer-initiated calls to carriers are less likely to result in slamming disputes.¹⁰ For example, BellSouth explains that, in most cases, customers who initiate a call have already made up their minds to change service providers and have chosen the called carrier as their preferred carrier.¹¹ Similarly, AT&T notes that there is little evidence that slamming from in-bound calls poses a legitimate threat to consumers,¹² while the United States Telephone Association (USTA) explains that burdensome verification procedures for in-bound calls would limit consumers' ability to exercise their choice of carriers.¹³ Recognizing the decreased opportunity for slamming in these instances, GTE maintains that carriers should have the flexibility to use call recording and other methods to verify in-bound customer change requests.¹⁴

¹⁰ See, e.g., BellSouth Comments at 11-12; Comments of the Direct Marketing Association, CC Docket No. 94-129 at 2-4 (filed Sept. 15, 1997); Comments of USTA, CC Docket No. 94-129 at 4-5 (filed Sept. 15, 1997) ("USTA Comments").

¹¹ BellSouth Comments at 11.

¹² AT&T Comments at 36.

¹³ USTA Comments at 4-5.

¹⁴ Comments of GTE Corporation, CC Docket No. 94-129 at 10-11 (filed Sept. 15, 1997) ("GTE Comments"); accord Comments of IXC Long Distance, CC Docket No. 94-129 at 3-4 (filed Sept. 16, 1997) ("IXC Long Distance Comments"). To the extent that the FCC determines that verification is required

D. The Commission Should Adopt a Bright Line Test For Determining Whether a Reseller Must Identify a Change in Its Underlying Carrier

A number of parties agree with the Commission's tentative conclusion to adopt a "bright line" test to determine a reseller's obligation to notify a subscriber about a change in an underlying carrier.¹⁵ For example, Cable & Wireless notes that a bright line test based on a customer's reliance upon the use of an underlying carrier would give carriers clear guidance concerning their obligations.¹⁶ GTE agrees that a bright line test is preferable to the existing case-by-case approach, and that such a test should consider whether the reseller has specifically identified the underlying carrier either in promotional materials or in a separate agreement with the subscriber.

III. THERE IS NO JUSTIFICATION FOR SUBJECTING ILECs TO UNIQUE AND DISCRIMINATORY REQUIREMENTS RELATED TO SLAMMING

Predictably, several interexchange carriers and competitive local exchange carriers ("CLECs") urge the Commission to impose unique and discriminatory verification and marketing restrictions on ILECs. These proposed

for in-bound calls, BellSouth also supports use of a call recording option to verify customer calls. See BellSouth Comments at 11.

¹⁵ See, e.g., Cable and Wireless Comments at 12-13; MCI Comments at 26; Comments of the National Association of Attorneys General, CC Docket No. 94-129 at 13 (filed Sept. 15, 1997) ("National Association of Attorneys General Comments").

¹⁶ Cable and Wireless Comments at 12-13.

restrictions include: (1) requiring that all ILEC PC changes be subject to independent, third-party verification;¹⁷ (2) restricting ILECs' attempts to contact customers that have left the ILEC for a competitor's service;¹⁸ and (3) mandating ILEC reporting requirements concerning PC-change processing and treatment of affiliated carriers.¹⁹ In alleged support of such requirements, these parties generally echo Comptel's contention that ILECs' control over the local telephone network creates "irresistible opportunities [for them] to engage in anticompetitive activities."²⁰ As explained below, however, the facts plainly belie these carriers' professed concerns.

A. Third Party Verification Requirements for ILEC Change Requests Are Unwarranted

GTE strongly disagrees with those parties who urge the Commission to require independent, third-party verification for all ILEC change orders, thus denying ILECs the range of verification options currently available to CLECs.²¹

¹⁷ See, e.g., Comments of the America's Carrier Telecommunication Ass'n., CC Docket No. 94-129 at ¶ 35 (filed Sept. 15, 1997) ("ACTA Comments"); Comptel Comments at 6; MCI Comments 8.

¹⁸ See, e.g., Comments of Frontier Corp., CC Docket No. 94-129 at 17 (filed Sept. 15, 1997) ("Frontier Comments").

¹⁹ See, e.g., Comments of LCI Int'l. Telecom Corp., CC Docket No. 94-129 at 8 (filed Sept. 15, 1997) ("LCI Comments").

²⁰ Comptel Comments at 3.

²¹ See, e.g., Comments of Billing Information Concepts Corp., CC Docket No. 94-129 at 6 (filed Sept. 15, 1997) ("Billing Information Concepts (BIC) Comments"); LCI Comments at 10; MCI Comments at 8; Comments of TPV Services, Inc., CC Docket No. 94-129 at 11 (filed Sept. 15, 1997) ("TPV Services Comments"). In particular, the FCC should not be swayed by those commenters

MCI, for example, argues that third party verification is appropriate because the "market power" of an ILEC is a "virtual guarantee that abuses, intentional or not, will occur" and that ILECs can no longer be expected to operate as a "neutral third party."²² However, a third party verification requirement is unnecessary given that ILECs have neither a unique incentive nor a greater ability to abuse the PC-change implementation process.

Slamming is not a problem that results from the abuse of the PC-change implementation process. Rather, slamming is caused by the submission of fraudulent PC change requests by unscrupulous carriers. The fact that ILECs control the facilities necessary to make PC changes gives them neither a greater ability nor an increased opportunity to slam customers by submitting fraudulent requests. In fact, a majority of IXC and CLEC PC-change requests are processed in bulk transactions, and ILECs merely act on these requests as they receive them, lacking any knowledge or opportunity to discover any potential fraud.

Even assuming, *arguendo*, the existence of some incentive for slamming on the part of the processing carrier, existing non-discrimination safeguards and

who supply third party verification services. See TPV Services Comments at 11 (arguing that the Commission require third-party verification when the carrier seeking to provide service is both the submitting and executing carrier or the executing carrier has a financial interest in the submitting carrier). Although GTE believes these firms play a valuable role in the market, their comments are clearly influenced by the fact that many such firms stand to benefit financially from the sale of additional verification services pursuant to a regulatory mandate.

²² MCI Comments at 8.

competitively-neutral ordering mechanisms are more than adequate to prevent anticompetitive behavior. As Ameritech notes, ILECs are already subject to numerous non-discrimination obligations, including those established by Section 251 of the Act, that prevent anticompetitive actions in the PC-change process.²³

Applying third party verification requirements only to ILEC change orders would be patently discriminatory and disproportionately burden ILECs without benefiting consumers. In the absence of any record evidence showing that ILECs have abused their position as processing carriers, there is no basis for such requirements. In addition, carriers should be allowed to choose the most efficient verification method that suits their marketing needs. In the absence of identifiable abuses, removing this flexibility only for ILECs inappropriately burdens ILECs and does not provide consumers with additional protection against slamming. Accordingly, the Commission should refrain from mandating third party verification requirement; or, if the agency determines that such a requirement is necessary, it should be applied to all carriers.

B. ILECs Should Not Be Subject To Different Marketing Restrictions or New Reporting Requirements

Some parties have asserted that ILECs alone should not be allowed to

²³ Ameritech Comments at 15-16. As an example, BellSouth explains that a CLEC's ability to initiate PC changes through its Operational Support Services ("OSS") access and the fact that IXCs and local toll providers can submit mechanized PC change orders limits the ability of ILECs to engage in anticompetitive activity. See BellSouth Comments at 8.

solicit²⁴ or send former customers inducements to encourage them to return to the ILEC.²⁵ In addition, LCI and others argue that, to the extent ILECs remain responsible for processing PC-change requests, they should be subject to new reporting requirements that document PC-change processing intervals and treatment of affiliated carriers.²⁶ Comptel further claims that verification procedures for customer-initiated calls should apply to ILECs, while their competitors should be exempt from such requirements.²⁷

As discussed above, no grounds exist to single out ILECs for increased regulation when there is no greater incentive or ability for them to engage in discriminatory conduct. In the context of promotional materials, ILECs do not have a greater incentive to slam or mislead consumers than any other carrier who distributes such information to consumers. GTE maintains that, as long as marketing materials are not combined with any notification to customers regarding an already-executed decision to change carriers, ILECs must be allowed to compete freely. This means that, since all other carriers are free to

²⁴ Comments of Time Warner Communications Holdings, Inc., CC Docket No. 94-129 at 4-5 (filed Sept. 15, 1997) ("Time Warner Comments").

²⁵ See, e.g., Frontier Comments at 19; Texas PUC Comments at 9.

²⁶ See, e.g., Comptel Comments at 6; Comments of Intermedia Communications, Inc., CC Docket No. 94-129 at 4 (filed Sept. 15, 1997) ("Intermedia Comments"); LCI Comments at 8.

²⁷ Comptel Comments at 10. As noted in Section II.C., GTE submits that full verification requests need not apply to in-bound customer requests. Further, Comptel's proposal should be rejected because ILECs have no greater ability to engage in slamming with respect to in-bound customer calls.

"win back" a customer that has changed carriers, ILECs should be treated no differently.

In addition, as U S West has pointed out, customer solicitations are protected First Amendment speech so long as they are not misleading or deceptive.²⁸ The Supreme Court has consistently recognized the value of truthful commercial speech in providing consumers with information necessary to make informed choices among competing products.²⁹ The Commission similarly should acknowledge the value of such information and ensure that any attempt to regulate marketing promotions of any carrier is executed in an equitable and nondiscriminatory manner consistent with these constitutional protections.

Similarly, GTE opposes placing new reporting requirements on ILECs regarding PC-change processing and treatment of affiliated carriers. There is no basis to impose such a requirement because existing safeguards prevent an ILEC from discriminating between the PC-change requests of different carriers. Further, ILECs should not be subject to reporting requirements merely by virtue of the fact that they process PC change requests, given the expense of generating such reports and the fact that they would not promote consumer protection.

²⁸ U S West Comments at 21.

²⁹ *Central Hudson Gas & Elec. Corp. v. Public Serv. Comm'n of New York*, 44 U.S. 557 (1980); *44 Liquormart, Inc. v. Rhode Island*, 116 S. Ct. 1495 (1996).

IV. PC-CHANGE FREEZES ARE A NECESSARY CUSTOMER PROTECTION DEVICE UNTIL SLAMMING IS ELIMINATED

Currently, PC-change freezes are the only effective means that customers have to protect themselves against slamming. A number of state PUCs and other LECs agree with GTE that PC-change freezes protect customers from slamming and that competitively neutral PC-change freeze policies do not unfairly impede competition among carriers.³⁰ For example, the New York Department of Public Service urges the Commission to continue to permit customers to place PC-change freeze requests, noting that a ban on PC-change freezes would "eliminate consumers' only slamming prevention mechanism at this time."³¹ GTE agrees. Until slamming has been eliminated, the use of PC-change freezes should not be impaired.

Those commenters who propose changes to existing PC-change freeze policies or suggest rules that would impair the use of PC-change freezes fail to understand the nature and cause of the current slamming problem.³² PC-change freezes were developed by GTE and other ILECs in response to thousands of

³⁰ See New York Department of Public Service Comments at 9; Tennessee Regulatory Authority Comments at 3; Ameritech Comments at 20-22; SBC Comments at 9-10; Comments of The Southern New England Telephone Company (SNET), CC Docket No. 94-129 at 2 (filed Sept. 15, 1997) ("SNET Comments").

³¹ New York Department of Public Service Comments at 9.

³² See, e.g., MCI Comments at 10-18; Intermedia Comments at 5-7; LCI Comments at 2-8.

customer slamming complaints. As GTE explained in its opening comments in this proceeding and elsewhere, it has spent considerable effort developing procedures to ensure that PC-change freezes are implemented in a nondiscriminatory fashion.³³ To this end, GTE offers a PC-change freeze only after the customer has requested, signed and returned a numbered form plainly indicating the nature of the PC-change freeze and the customer's ability to lift the freeze. This system of numbered and authenticated forms is carefully designed to protect the integrity of the PC-change process by limiting the opportunity for fraudulent requests.

GTE thus strongly urges the Commission to refrain from adopting the suggestions of MCI, Comptel and others to limit PC-change freeze programs through extensive regulations, such as third party verification and moratoria on ILEC PC-change freezes.³⁴ Such proposals subordinate the right of customers to make effective changes and protect themselves against slamming. It must be stressed that any policy should be designed to empower customers to protect themselves.

Further, MCI's and Comptel's proposals are misguided because they weaken protection against slamming and increase consumers' costs. For

³³ GTE Comments at 11-12.

³⁴ See, e.g., Comptel Comments at 8 (proposing 6-month moratorium); Intermedia Comments at 5-7; LCI Comments at 2-4 (proposing to eliminate local PC-change freezes); MCI Comments at 10-18 (proposing to prohibit implementation of local PC-change freezes by the dominant local carrier and solicitation of intraLATA PC-change freezes by ILECs from one year following the availability of presubscription).

example, requiring that third parties verify all PC-change freezes is likely to force consumers to incur additional cost and inconvenience to protect themselves from slamming. Such burdens may well discourage customers from seeking protection. Similarly, moratoria are inappropriate because they eliminate consumers' ability to protect themselves from slamming. As noted above, GTE already has written verification procedures for PC-change freezes in place to ensure accurate processing of such requests. More burdensome requirements are unwise and unnecessary.³⁵

Of course, GTE agrees that PC-change freeze policies must be implemented in a non-discriminatory and competitively-neutral manner.³⁶ As fully explained in its initial comments, GTE treats all carriers, including affiliates, the same for PC-change freeze purposes consistent with non-discrimination requirements that apply to all LECs.³⁷ These safeguards ensure that PC-change freezes are used for their intended purpose of allowing customers to protect

³⁵ ACTA proposes in its comments that the FCC permit a reverse PC-freeze under which the incumbent carrier can switch back a customer that it discovers has left its network and then notify the customer of the switch. See ACTA Comments at ¶ 56. GTE submits that ACTA has it backwards. Although slamming is a significant problem, the majority of customers who switch carriers have chosen to do so. Allowing any automatic "switch back" mechanism is likely to thwart true consumer choice and result in customers being double-slammed as they are improperly "returned" to their original carrier. PC freezes are a much more effective mechanism to prevent customers from being switched from their preferred carrier.

³⁶ See, e.g., National Association of Attorneys General Comments at 11-12; New York State Department of Public Service Comments at 9.

³⁷ GTE Comments at 12.

themselves against slamming. GTE's policies also are fully consistent with the concerns expressed by the National Association of Attorneys General and others that PC-change freezes are implemented only at the "clear and unequivocal" request of a customer and that PC-change freeze information is made available to customers.³⁸

Similarly, GTE agrees that any notification regarding a PC-change freeze must explain customers' rights concerning the PC-change freeze and specifically indicate what preferred carriers are being frozen. In addition, such notification should not be included with any promotional materials or presented in a fashion that is likely to cause customer confusion. In view of the FCC's existing authority to prevent unreasonable carrier practices and to punish those engaging in such practices,³⁹ additional rules are not necessary to prevent consumers from deceptive carrier conduct related to PC-change freezes.⁴⁰

³⁸ See e.g., National Association of Attorneys General Comments at 11-12.

³⁹ See 47 U.S.C. § 201(b); 47 C.F.R. §§ 1.701-735.

⁴⁰ Should the Commission nonetheless determine that PC-change freeze rules are necessary, GTE suggests that ILECs should be given flexibility to adopt their own verification procedures so long as they can document customers' changes. The Commission must bear in mind that ILECs have a strong incentive to adopt efficient PC-change freeze verification procedures so that consumers' changes are processed accurately. In any event, such rules should not go beyond those verification procedures applicable to PC changes.

V. LECs SHOULD NOT BE SUBJECT TO LIABILITY FOR SIMPLE PROCESSING ERRORS AND SHOULD NOT BE HELD TO AN ARBITRARY DEADLINE FOR PROCESSING PC-CHANGE REQUESTS

As explained in GTE's comments, it is not credible to contend that Congress intended to impose liability on carriers for inadvertent mistakes.⁴¹ GTE's proposed definitions of submitting and executing carriers, which are consistent with Congress' intent that both executing and submitting carriers be subject to verification procedures, would clarify the circumstances giving rise to carrier liability.⁴² Adoption of these definitions would implement the mandate of Section 258 that those carriers who violate the FCC's verification rules and collect charges from customers (and thus benefit from the unauthorized change) should be liable.⁴³

Although some carriers argue that ILECs should be liable for any mistakes,⁴⁴ others recognize that this is not what Congress intended.⁴⁵ For example, Frontier Corporation explains that there is no policy or consumer protection justification for imposing liability on either the submitting or executing

⁴¹ GTE Comments at 7.

⁴² Id. at 5-8. Under GTE's definitions, a submitting carrier is a carrier that submits a PC-change request to a processing carrier, and an executing carrier is a carrier that both initiates and processes a PC change on its own behalf.

⁴³ 47 U.S.C. § 258.

⁴⁴ See, e.g., Comptel Comments at 14; Comments of Sprint Corporation, CC Docket No. 94-129 at 7-8 (filed Sept. 15, 1997) ("Sprint Comments").

⁴⁵ See, e.g., Frontier Comments at 13 & n.25.

carrier for innocent mistakes.⁴⁶ In such cases, the Commission should follow precedent in refusing to interfere with existing limitations of liability for the carrier making the mistake, given the absence of any indications from Congress that it sought to override such provisions in Section 258.⁴⁷

Similarly, commenters' suggestions that ILECs should be liable for any PC changes that are not accomplished in narrowly prescribed periods of time are at best premature and at worst inconsistent with the statute.⁴⁸ It is inappropriate to attempt to determine a reasonable time period for completion of PC changes since a number of factors, such as equipment capability and order volume, affect the definition of a reasonable time period under the circumstances. In any event, the Commission should not be concerned with establishing such timeframes; all that is required by the Act is that ILECs treat all carriers in a nondiscriminatory manner.

VI. REQUIRING THAT ALL PC CHANGES BE PERFORMED BY A THIRD PARTY WILL INCREASE COSTS WITH NO CORRESPONDING PUBLIC BENEFIT

GTE disagrees with those parties who propose that all carrier PC changes should be processed by neutral third parties.⁴⁹ Such a proposal will result in a

⁴⁶ Id.

⁴⁷ GTE Comments at 7.

⁴⁸ See, e.g., Comptel Comments at 14; Comments of Excel Communications, Inc., CC Docket No. 94-129 at 5 (filed Sept. 15, 1997) ("Excel Comments"); MCI Comments at 24; Texas PUC Comments at 3.

⁴⁹ See, e.g., ACTA Comments at ¶ 35; MCI Comments at 25-26; Sprint Comments at 19; Comments of Worldcom, Inc., CC Docket No. 94-129 at 16

costly and unwieldy bureaucracy that will offer no additional protection from slamming. As a number of state PUCs confirmed, a nationwide third party PC-change processing system would be costly to develop and administer and would place substantial additional costs on ILECs that now process PC changes -- costs that would ultimately be passed along to consumers.⁵⁰ Therefore, this approach is likely to increase the cost to the customer of switching carriers and thus discourage rather than promote competition.

In any event, third party processing of PC changes will not solve the slamming problem. As noted above, slamming is caused by carriers submitting change orders without complying with the FCC's rules, rather than by processing carriers failing to carry out authorized carrier changes.⁵¹ A third party assigned to carry out carrier changes will not ameliorate this problem, but merely reassign the entity responsible for processing the change. Accordingly, such a request will lead to increased costs with no decrease in the incidence of slamming.

VII. CONCLUSION

The Commission should implement Section 258 in manner that eliminates the incentive to engage in slamming and permits consumers to take reasonable steps to protect themselves against the unscrupulous conduct of bad actors.

(filed Sept. 15, 1997).

⁵⁰ See, e.g., Comments of the Public Staff -- North Carolina Utilities Commission, CC Docket No. 94-129 at 7 (filed Sept. 16, 1997).

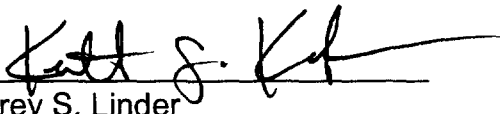
⁵¹ GTE Comments at 17.

This objective can be accomplished by both vigorously enforcing current slamming rules and adopting rules to promote the interests of consumers by empowering them to protect themselves. The Commission should not adopt the far-reaching rules urged by some commenters that, while ostensibly addressing theoretical and undocumented risks to consumers, in fact, go far beyond consumer protection in an attempt to handicap ILEC competition. Such proposals are consistent with neither the Act nor the public interest.

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GTE Service Corporation and its
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